

Application No. 10/072,494
Docket No. A1-1431
Amendment dated December 19, 2003
Reply to Office Action of October 21, 2003

REMARKS

In the Office Action, the Examiner reviewed claims 1-40 of the above-identified US Patent Application, with the result that claim 1 was objected to, claims 1-9, 11-19, 21-29 and 31-39 were rejected under 35 USC §102, and claims 10, 20, 30 and 40 were rejected under 35 USC §103. In response, Applicant has amended the claims as set forth above. More particularly:

Independent claim 1 was amended to overcome an objection based on a clerical error in the claim. Applicant respectfully believes the ground for the objection is overcome and requests its withdrawal.

Independent claims 1 and 21 have been amended to incorporate the limitation from their respective dependent claims 3 and 23 that the product (32) is expressly required to be forced by force-applying means (52) into contact with the guide means (46) located on one side (48) of the passage (50). See apparatus claim 3 and method claim 23, which already required "forcing the product away from the second portion of the passage and *into contact with the guide means*" (emphasis added).

Similarly, independent claims 12 and 32 have been amended to more clearly state that the product (32) is forced by fluid jets (52) into contact with the splines (46) located on a diametrically-opposite side (48) of the passage (50). In addition to claims 3 and 23, support for this amendment can be found in independent claim 32 as previously presented in the amendment filed August 6 (Paper No. 8), since claim 32 already required a product (32) passing through a passage (50) while a force is applied

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“to maintain the product *in contact* with the splines during engagement with the cutting means” (emphasis added).

Applicant also believes that the original claims considered by the Examiner also required this result. For example:

at least a first set of at least two fluid jets flowing in a downward direction across the passage from the second portion of the passage toward the wall portion, the fluid jets converging toward the first wall portion *to apply a force* on a product traveling downward through the passage *and maintain the product in contact with the splines during engagement with the cutting means*;

....

As-filed Claim 12 (emphasis added).

flowing at least a first set of at least two fluid jets in a downward direction across the passage from the second portion of the passage toward the wall portion, the fluid jets converging toward the first wall portion to apply a force on a product traveling downward through the passage and *maintain the product in contact with the splines during engagement with the cutting means*.

As-filed Claim 32 (emphasis added).

Accordingly, Applicant's claims as filed and also as now amended require the application of a force that is responsible for causing a product (32) to contact guide means (46) along one portion (48) of a passage (50). Because as-filed and previously-presented claims also expressly required this limitation, the present amendments do not raise any new issues that would require further consideration and/or search by the Examiner. Finally, Applicant believes that the above amendments place the claims in

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better condition for appeal.¹

Favorable reconsideration and allowance of claims 1-40 are respectfully requested in view of the above amendments and the following remarks.

Re Examiner's Interviews

During the Examiner's Interview of December 17, 2003, Examiner Hamilton asked that Applicant clarify use of the term "guide means" in claims 1-11 and 21-31. As noted by Applicant's undersigned representative during the interview, the term "guide means" is used in the specification at paragraph [0010] ("splines or other suitable guide means"), and therefore clearly encompasses the splines recited in independent claims 12 and 32.

As also discussed during the interview of December 17, Applicant believes that the limitation in claim 1 requiring the force-applying means to function "so that the product is forced . . . into contact with the guide means" is a positive limitation for the apparatus claims 1-11, since the limitation is specified in claim 1 as a "function" of a "means" in a means-plus-function clause, namely "means for applying a force . . . so that the product is forced . . . into contact with the guide means during engagement with the cutting means."

¹ MPEP §714.13 instructs:

"The refusal to enter the proposed [Rule 116] amendment should not be arbitrary. The proposed amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified."

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Rejection under 35 USC §102

Independent claims 1, 12, 21 and 32 and their dependent claims 2-9, 11, 13-19, 22-29, 31, and 33-39 were rejected under 35 USC §102(b) as being anticipated by US Patent No. 5,473,967 to Frey et al. (Frey).

Throughout Applicant's specification, Applicant teaches that a key aspect of his invention is maintaining contact between the product 32 and the guide means (splines) 46 located on a portion 48 of the passage 50 opposite a force-applying means (fluid jets) 52. For example, see paragraph [0025] of Applicant's specification.

Frey was cited as disclosing a "passage 37; . . . guide means 140; first portion of the passage 140 . . . ; [and] means for applying a force 90, 130." The Examiner also noted that "[w]ith equal and opposite horizontal forces from the jets, the food product is centered in the passage," but that "the horizontal force that the jet produces urges food product away from that portion of the passage and tries to force it to the oppositely-disposed portion of the passage." However, such an argument does not address the distinction between Applicants' claimed invention and that of Frey: Frey's force-applying means 130 does not operate to force a food product *into contact* with guide means 140 located opposite the force-applying means 130 within the same passage. Instead, Frey's nozzles 90 circumscribe a central path 37 and discharge fluid jets 130 that intersect at the path 37 (see Frey at lines 58-60 of column 1, lines 6-13 of column 5), with the result that the fluid jets 130 operate *to "centralize" products along the*

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path 37 (see Frey at lines 54-55 of column 1, lines 45-46 of column 3, lines 62-63 of column 5). Also:

Each potato is forced towards a central position and oriented with its longitudinal axis coincident with the center line axis of the rings and the orienter by means of the water jets.

Frey at column 5, lines 25-30.

In summary, Frey does not disclose or suggest that the fluid jets 130 cause food product to contact a guide means along an oppositely-disposed portion of a passage (as required by claims 1, 12, 21 and 32).

During the interview of December 17, the Examiner inquired as to whether, in Applicant's opinion, Frey's apparatus could operate to cause products to contact Frey's guide means 140. After further consideration of this question, Applicant's undersigned representative wishes to point out that:

(a) The diameter of Frey's guide means 140 is sized for the diameter of the food products (lines 46-55 of column 5, lines 64-66 of column 6), suggesting that a close fit exists between the guide means 140 and the food products.

(b) Frey's guide means ("orienter") 140, though lying along the same path 37 as the nozzles 90 and the fluid jets 130 discharged therefrom, is not within the same passage as the nozzles 90 because the guide means 140 is axially spaced below the rings 40-70 on which the nozzles 90 are mounted, and therefore defines a passage that is below, separate, and distinct from the passage containing the nozzles 90.

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Consequently, Frey's guide means 140 is also not technically diametrically opposite Frey's fluid jets 130.²

In view of the above, Applicant believes that Frey's fluid jets 130 operate to center food products before they enter the guide means 140, after which the guide means 140 (because of its close fit with the food products) is responsible for centralizing the food products as they enter the cutter 150 (see Frey at lines 34-35 of column 5). In any event, the operation of Frey's fluid jets 130 and guide means 140 as shown in Figure 6 does not indicate how Frey's fluid jets 130 could force an entire product away from one side of the guide means 140 so as to contact a diametrically-opposite side of the guide means 140, and such a result would be contrary to the centralizing force applied by Frey's fluid jets 130.

For all of the above reasons, Applicant believes that Frey does not anticipate independent claims 1, 12, 21 or 32 nor any of their dependent claims.

With particular respect to claims 6 and 26, the Examiner stated in the Office Action that "it [is] inherent that the fluid jets can intersect in any location in the passage as described in column 5, lines 3-24," and stated with respect to claims 16, 19, 36 and 39 that Frey's fluid jets converge at multiple locations 131, 132, 133 and 134 (along path 37). However, Applicant cannot find any basis in Frey for fluid jets that intersect at

² Claims 12 and 32 require the splines to be located on a wall portion and the jets to flow from a *diametrically*-opposite second portion of the passage.

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a wall of Frey's device. Nor can Applicant find any support for the Examiner's assertion that "it [is] inherent that the fluid jets can intersect in any location in the passage." The text from Frey cited by the Examiner states that the fluid jets 130 may intersect at locations other than 131, 132, 133 and 134, but only as a result of directing the jets 130 at different angles toward or away from the cutter 150, i.e., different angles from vertical. Because the jets 130 are required to centralize the products, alternative locations for the intersecting jets 130 are still *inherently* and *necessarily* going to be along the central axial path 37, and not at a wall of Frey's device. Therefore, Applicant believes that Frey also does not disclose or suggest the subject matter of claims 6, 16, 19, 26, 36 and 39.

In summary, because Frey does not disclose that the fluid jets 130 cause products to contact Frey's guide means 140, whereas Applicant's claims require force-applying means 52 that forces products 32 into guide means 46, Applicant respectfully requests withdrawal of the rejection under 35 USC §102.

Rejection under 35 USC §103

Dependent claims 10, 20, 30 and 40 were rejected under 35 USC §103(a) as being unpatentable over Frey in view of U.S. Patent No. 2,664,130 to Kubon. In view of the arguments made under the §102 rejection, Applicant also believes that the combination of Fry and Kubon does not obviate the subject matter of dependent claims

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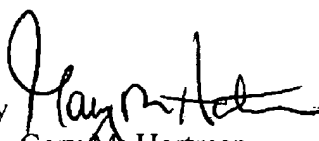
10, 20, 30 and 40 under 35 USC §103(a), because Kubon was merely cited for disclosing crinkled and V-sliced cuts. Accordingly, Applicant also respectfully requests withdrawal of the rejection under 35 USC §103.

Closing

In view of the above, Applicant believes that all rejections to his claims have been overcome, and that the claims define patentable novelty over all the references, alone or in combination, of record. It is therefore respectfully requested that this patent application be given favorable reconsideration.

Should the Examiner have any questions with respect to any matter now of record, Applicant's representative may be reached at (219) 462-4999.

Respectfully submitted,

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December 19, 2003
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